IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.1472 OF 1996
IN
NOTICE OF MOTION NO.2475 OF 1993
IN
SUIT NO.3872 OF 1993

1-A. Smt.Urmila Kanjibhai Patel,
1-B. Sagar Kanjibhai Patel,
1-C. Smt.Daksha Mehul Patel,
1-D. Miss Jagruti Kanjibhai Patel,
1-E. Smt.Kalpana Tejal Patel,
1-F. Ketan Kanjibhai Patel,

all of Bombay Indian Inhabitants, heirs and representatives of the deceased original Appellant Shri Kanjibhai Bhanabhai Patel, residing at Flat No.3, Girnar Co-op.Hsg. Society Ltd., Chappel Lane, Santacruz (West),Mumbai-400 052. — Appellants (original defendant No.1)

vs.

1. M/s.Amar Pratik Builders (I) Pvt. Ltd., a Private Company, incorporated under the provisions of the Companies Act-I, of 1956, and having its registered office at 204-A, Vikas Vertex, Nr.Andheri Police Station, Andheri(East),Bombay 400 069. — Respondent No.1-original plaintiff.

2. Jawahar Ramchand Gurbaxani, of Bombay Indian Inhabitant carrying on business in the firm name and style of M/s.Weather Works, as its Sole Proprietor at Plot No.A-19, Victor Paints, Veera Desai Road, Andheri (West), Bombay-400 058. — Respondent No.1-original Defendant no.2.

Mr.Birendra Saraf i/b. M/s.Bharat & Co. for the appellants

Mr.Shailesh Shah i/b.M/s.Pandya & Poonawala for the respondent no.1.

Ms.Maya Sorhan i/b.M/s. M. Munim & Co. for the respondent no.2.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 14th November 2005

ORAL JUDGMENT (Per R.M.Lodha,J.).

Heard.

2. During the course of hearing, our attention was drawn to the order dated 14th July 1999 passed by the learned motion Judge in the notice of motion taken out in the year 1999. The said notice of motion is unnumbered. By the said order, the learned motion Judge permitted the present appellants to put up the factory shed over the suit land. It was made clear in that order that in the event the Suit was ultimately decreed, the appellants (original defendant no.1) shall not claim any special equities by virtue of the consideration being made.

3. We are informed that pursuant to the order dated 14th July 1999, the appellants have put up the factory shed and the said premises are being used by the appellants. The order dated 14th July 1999 has not been challenged by the original plaintiff (respondent no.1). In view thereof, we are satisfied that detailed consideration of the matter is not necessary and the interest of justice shall be subserved by the following order:

(i) The impugned order dated 24th October 1996 shall be treated as modified by the order dated 14th July 1999.

(ii) The appellants shall be at liberty to apply to the learned motion Judge for permission to the appellants to create third party right or interest in the constructed portion (factory shed) if the appellants get a firm proposal in that regard and the proposed third party undertakes to abide by the ultimate decree that may be passed in the Suit.

4. No costs.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)